

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Figura	Team: Team # 5	CCRB Case #: 200614604	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 10/29/2006 4:30 AM	Location of Incident: In front of 15 East 167 Street	Precinct: 44	18 Mo. SOL 4/29/2008	EO SOL 4/29/2008	
Date/Time CV Reported Sun, 10/29/2006 4:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 11/01/2006 4:49 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Rivera	11552	939321	044 PCT
2. SGT Osvaldo Nunez	03579	918086	044 PCT
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Bobby Milchak	27823	937881	044 PCT
2. POF Melissa Rodriguez	13134	939349	044 PCT
3. POF Tiffany Dozier	07879	938398	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Rivera	Discourtesy: Officer Joseph Rivera spoke obscenely and/or rudely to § 87(2)(b)	
B.POM Joseph Rivera	Force: Officer Joseph Rivera used physical force against § 87(2)(b)	
C.SGT Osvaldo Nunez	Force: Sergeant Osvaldo Nunez struck § 87(2)(b) with a baton.	
D. An officer	Force: An officer struck § 87(2)(b) with a baton.	
E. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	
F. An officer	Abuse: An officer refused to provide his name and/or shield number to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
G.SGT Osvaldo Nunez	Abuse: Sergeant Osvaldo Nunez refused to provide his name and/or shield number to § 87(2)(b)	
H.SGT Osvaldo Nunez	Force: Sergeant Osvaldo Nunez used pepper spray against § 87(2)(b)	
I. An officer	Force: An officer used physical force against § 87(2)(b)	

Synopsis

This complaint was filed by § 87(2)(b) and § 87(2)(b) who called 911 on October 29, 2006, and were transferred to the Internal Affairs Bureau's command center. (encl. 1c-d) The force allegations in the complaint were spun off to the CCRB on November 13, 2006. According to Sergeant David Flaherty of the Investigative Review Section, the remaining allegations were investigated by the Patrol Borough and did not pertain to force, abuse of authority, discourtesy, or offensive language (FADO). § 87(2)(b) also left a complaint regarding the incident on the CCRB's Call Processing System on the same day. (encl. 1a-b) § 87(2)(b)'s case was originally assigned to investigator Henry Cordes. § 87(2)(b) also filed a complaint regarding the incident with the Internal Affairs Bureau on November 9, 2006, in which the force allegation was spun-off to the CCRB on November 14, 2006. The force allegations in the complaint were spun off to the CCRB on November 13, 2006. According to Sergeant David Flaherty of the Investigative Review Section, the remaining allegations were investigated by the Patrol Borough and did not pertain to force, abuse of authority, discourtesy, or offensive language (FADO). § 87(2)(g)

On October 29, 2007, at approximately 4:00 a.m., Two Cousins Bar (now closed), located at 15 East 167th Street, in the Bronx, was closing for the evening. § 87(2)(b) and § 87(2)(b) employees of the bar, were attempting to remove a patron who was fighting with them, § 87(2)(b) from the bar. Officer Joseph Rivera, Sergeant Osvaldo Nunez and Officer Melissa Rodriguez, who were seated in a marked patrol van across the street, witnessed the fight occurring at the entrance to the bar and approached. Officer Rivera attempted to remove § 87(2)(b) and § 87(2)(b) from the bar, but they resisted. Officer Rivera pushed § 87(2)(b) against a wall, told him “just put your hands behind your fucking back,” then punched him in the jaw, stomach and back. (Allegations A and B). Sergeant Nunez struck § 87(2)(b) with a baton. (Allegation C). An unidentified female officer approached § 87(2)(b) another patron of the bar who was standing outside, told her to leave the scene and then allegedly struck her in the head with a baton. (Allegation D)

§ 87(2)(b) a patron of the bar, approached an unidentified male officer to speak to him. This officer allegedly told him to get the fuck out of his face before he goes to jail and splits his skull. (Allegation E) § 87(2)(b) asked this officer for his badge number and he allegedly responded “I’ll give you a cell number.” (Allegation F) § 87(2)(b) then walked away from the officer.

§ 87(2)(b) left and along with § 87(2)(b) another patron of the bar, approached Sergeant Nunez and told him that officers were beating and pepper spraying innocent people. § 87(2)(b) asked Sergeant Nunez for his badge number and he allegedly responded “you won’t get shit from me.” (Allegation G) § 87(2)(b) told Sergeant Nunez “they hit my girl § 87(2)(b) in the head with a baton; she had nothing do with it.” Sergeant Nunez allegedly said “shut the fuck up” and sprayed her with pepper spray a single time. (Allegation H)

A large crowd gathered outside the bar. Officer Rodriguez called for assistance and additional officers arrived on the scene. § 87(2)(b) and § 87(2)(b) along with four other individuals were taken into custody. An unidentified officer instructed § 87(2)(b) a patron of the bar who was standing outside, to move and after he did not comply allegedly shoved him in the chest, causing him to fall. (Allegation I)

§ 87(2)(g) [REDACTED]

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) (encl. 10-r)

§ 87(2)(b) was interviewed on February 9th, 2007. § 87(2)(b) is a § 87(2)(b)-old black male, who is 6'1" tall, weighs 180 lbs., and has black hair and brown eyes. § 87(2)(b)

§ 87(2)(b) was present at Two Cousins Bar in the Bronx at around 4:00 a.m. A marked police van stopped outside of the bar. § 87(2)(b) the owner of the bar and § 87(2)(b) were ushering people out of the bar. There was only one door open so there was a backlog of people.

At some point the police van moved to the same side of the street as the bar in front of a bus. § 87(2)(b) and § 87(2)(b) became involved in a "friendly" altercation. § 87(2)(b) and § 87(2)(b) began to pull § 87(2)(b) out of the bar.

At about 4:15 a.m., Sergeant Osvaldo Nunez, described as heavysset, close to 300 lbs., with glasses and a thick black mustache along with Officer Joseph Rivera, the driver of the van, described as a Hispanic male, bald, in his early 30's, 150-160 lbs., exited the van. § 87(2)(b) picked up § 87(2)(b) by his body and attempted to pull him outside but he held onto the door. Sergeant Nunez grabbed § 87(2)(b) and slammed him into the wall. Officer Rivera reached inside the door and grabbed § 87(2)(b). Several women grabbed § 87(2)(b) around his legs to prevent him from being pulled out of the bar. § 87(2)(b) noted that Officer Rivera probably could not see these individuals and thought that § 87(2)(b) was resisting arrest, when he was actually unable to move. The individuals then began to yell at Officer Rivera, telling him that he wasn't taking § 87(2)(b). Officer Rivera drew his pepper spray. § 87(2)(b) then began to punch the individuals so that they would let him go. Officer Rivera then pulled § 87(2)(b) out of the bar and lifted him up two feet and slammed him against a metal gate face first, and then pulled him back down to the ground. An officer, identified via investigation as Sergeant Nunez, then hit him with a flashlight, an asp or a baton.

An unidentified officer described as a white female, with blonde hair, 5'3"-5'4" tall approached a number of women with her asp drawn and told them to leave. This officer then approached § 87(2)(b) and told her to leave, § 87(2)(b) refused and the officer struck her in the head with her asp, splitting her scalp open.

§ 87(2)(b) approached an unidentified male officer to speak to him. This officer told him to get the fuck out of his face before he goes to jail and splits his skull. § 87(2)(b) then walked away from the officer. Later in the interview § 87(2)(b) stated that he asked this officer for his badge number and he responded "I'll give you a cell number."

§ 87(2)(b) left and along with § 87(2)(b) approached an officer, identified as Sergeant Osvaldo Nunez. § 87(2)(b) told Sergeant Nunez that officers were beating and pepper spraying innocent people. § 87(2)(b) asked Sergeant Nunez for his badge number and he responded "you won't get shit from me." § 87(2)(b) told Sergeant Nunez that § 87(2)(b) had been hit with a baton. Sergeant Nunez said "shut the fuck up" and sprayed her with pepper spray a single time. § 87(2)(b) turned away as she was being sprayed. § 87(2)(b) could not estimate how long Sergeant Nunez sprayed § 87(2)(b) with the pepper spray. § 87(2)(b) and § 87(2)(b) then walked away from Sergeant Nunez and went back into the bar.

§ 87(2)(b) also stated that he witnessed two groups of people being pepper sprayed by unknown officers. One group of 8-12 people was sprayed by 10 unknown officers while at the bottom of the hill at 167th Street and Jerome Avenue. Another group of 8-12 people attempting to get inside of a Spanish restaurant on the corner of 167th Street and Jerome Avenue was pepper sprayed by a group of 4-6 officers led by Sergeant Nunez. § 87(2)(b) could not provide any additional details about these incidents. When pressed for additional detail § 87(2)(b) stated that he wanted to leave the numbers “vague” as the NYPD was going to be sued and he would have to testify again at a 50 H hearing or someone’s trial, and that being more specific would “bind” him.

An unidentified Hispanic male stepped out of the open police van (while in handcuffs) to protest being arrested § 87(2)(b) and § 87(2)(b) were in the van at this point]. An unidentified officer described as a white male, 28-30-years-old, about 175 lbs, with black hair, medium build, small in stature, hit the male in the head with his asp. The Hispanic male then stepped back into the vehicle. The officer instructed him to get down. When the van pulled away the officer continued to hit the Hispanic male with his asp.

At about 4:50 a.m., § 87(2)(b) and § 87(2)(b) drove to the 44th Precinct. Officers at the precinct refused to speak with § 87(2)(b).

§ 87(2)(b) (encl. 1j-n)

§ 87(2)(b) was interviewed at the CCRB on July 29, 2007. § 87(2)(b) is a § 87(2)(b)-old black male, who is 5’4” tall, weighs 130 lbs., and has black hair and brown eyes. § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) was standing outside the bar waiting for his girlfriend, whose name he did not provide, who was still inside. Unidentified officers were instructing people to move away from the entrance of the bar. An unidentified officer, described as a uniformed white male, 4’8” tall, weighing 350 lbs, with brown eyes, approached § 87(2)(b) from behind. § 87(2)(b) turned around and stopped. The officer told § 87(2)(b) to keep moving. The officer raised his nightstick in a thrusting forward motion. § 87(2)(b) did not move and the officer pushed him with both hands in the chest. § 87(2)(b) fell backwards and his back hit a padlock on the gate of a building adjacent to Two Cousins Bar.

Four to five officers attempted to pull § 87(2)(b) out of the bar. § 87(2)(b) and several other people attempted to pull § 87(2)(b) back inside. An officer whom § 87(2)(b) could not describe pushed § 87(2)(b) against the glass doors of the bar and then brought him to the ground and handcuffed him along with an unknown number other unidentified officers. § 87(2)(b) “fought” with the officers when they attempted to handcuff him, but he did not actually strike the officers. An officer placed his knee in § 87(2)(b)’s back. Another unidentified officer punched § 87(2)(b) somewhere around his back after he was handcuffed. § 87(2)(b) could not describe the officer who hit § 87(2)(b). § 87(2)(b) did not hear any officers curse at § 87(2)(b).

§ 87(2)(b) stated that unknown officers instructed an unknown group of approximately three people standing in front of the bar to move and keep walking. One or more people in the group responded by cursing at the officers, but no one moved. An officer then pepper sprayed the group of people.

§ 87(2)(b) stated that an unknown officer whom he could not describe discharged pepper spray in his general direction when he was standing in the street with a large group of individuals. The officers directed these individuals to disperse and they did not. The officer did not direct the pepper spray at any particular individual. § 87(2)(b) did not see any officers strike anyone with their asps or batons.

Results of Investigation

VICTIM STATEMENTS

§ 87(2)(b) (encl 1j-n)

§ 87(2)(b) was interviewed at the CCRB on November 16th, 2006. § 87(2)(b) is a § 87(2)(b)-old black male, who is 5'8" tall, weighs 140 lbs., and has black hair and brown eyes. At the time of his CCRB statement, § 87(2)(b) was self-employed as a DJ.

On October 29th, 2006, at around 3:45 a.m., § 87(2)(b) was inside of Two Cousins Bar, located at 15 E. 167th St. in the Bronx. § 87(2)(b) is one of the DJ's at the bar. § 87(2)(b) became involved in a "playful" physical altercation with one of his friends, § 87(2)(b). The owner of the bar, § 87(2)(b) physically removed him from the bar. A police van was outside of the bar. An officer, identified by the investigation as Officer Joseph Rivera and described as a Hispanic male, 5'7", 160 lbs., with short dark hair, medium build, 28-34 years in age, exited the van and grabbed § 87(2)(b). § 87(2)(b) then reached into the bar and held onto § 87(2)(b). Officer Rivera then attempted to grab § 87(2)(b) as well. Three or four patrons from the bar, including § 87(2)(b) (last name unknown), § 87(2)(b) and the head of security at the bar attempted to hold onto § 87(2)(b) to prevent Officer Rivera from pulling him out of the bar. § 87(2)(b) told Officer Rivera that there were no problems. § 87(2)(b) told Officer Rivera to get off of him. Eventually Officer Rivera wrested § 87(2)(b) away from the doorway and pushed him up against the glass in the lobby and asked § 87(2)(b) why he had grabbed his hand. § 87(2)(b) denied this and Officer Rivera advised him to turn around and stated that he was under arrest. Officer Rivera pushed § 87(2)(b) up against the building. § 87(2)(b) refused to put his hands behind his back despite the officer's repeated orders to do so. § 87(2)(b) continued to ask why he was being arrested but Officer Rivera just reiterated "just put your hands behind your fucking back." Another officer, identified via investigation as Sergeant Osvaldo Nunez, approached at this point and attempted to grab § 87(2)(b)'s hand as well. Officer Rivera grabbed § 87(2)(b)'s right hand, pulled him around to face him and punched him in the jaw, knocking off his glasses and then hitting him around his stomach. § 87(2)(b) fell to the ground and the officer hit him in his back, between his shoulder blades, a single time. § 87(2)(b) stayed on the ground for a short period of time. Officer Rivera returned and along with an unknown officer handcuffed § 87(2)(b) picked him up and placed him in a police van.

While in the van, § 87(2)(b) observed officers hitting unknown individuals with batons and using pepper spray. Officer Rivera returned to the van and told § 87(2)(b) "ya'll gonna learn, we're not playing with ya'll." A "Puerto Rican" man who the officers arrested across the street from the bar was hit with a baton by Officer Rivera while in the van. While in the van, § 87(2)(b) saw his friend § 87(2)(b) being pepper sprayed by an unidentified officer, while she was on the phone with Internal Affairs § 87(2)(b) did not have his glasses at this point and thus could not describe the officer.) Officer Rivera returned to the bar and grabbed § 87(2)(b) § 87(2)(b) and other arrested individuals were taken to the 44th Precinct.

As, § 87(2)(b) was being taken to the cells, Officer Rivera was twisting his cuffs so as to hurt him. § 87(2)(b) and a number of other individuals from the bar went to the 44th Precinct. An officer advised § 87(2)(b) that those in custody were being charged with § 87(2)(b) and asked him if he wanted to press charges but he declined. § 87(2)(b)'s wife, § 87(2)(b) arrived and § 87(2)(b) called out to her and told her that the officer was hurting him. § 87(2)(b) was allowed by Sergeant Nunez to come to the back of the precinct and see § 87(2)(b). She took pictures of his injuries. Officer Rivera then took § 87(2)(b) from the cell to another area of cells in the precinct. On the way to these cells Officer Rivera punched § 87(2)(b) in the back.

§ 87(2)(b) requested medical attention and was taken to § 87(2)(b). While there, Officer Rivera joked with § 87(2)(b) saying "I knocked you out, huh." § 87(2)(b) responded "you hit like a girl." Officer Rivera told him that when he was trying to arrest § 87(2)(b) § 87(2)(b) knocked his hand away, which § 87(2)(b) denied. Officer Rivera told § 87(2)(b) that he was being arrested for § 87(2)(b). § 87(2)(b) agreed with Officer Rivera that he would say that the cuts on his arm and his side were sustained from falling. § 87(2)(b) sustained no bruising from the officer's punches. Officer Rivera also told § 87(2)(b) that he did not

normally wear a uniform, and asked § 87(2)(b) if he knew anyone who had guns and indicated that if § 87(2)(b) had such information he would let him go.

There are no visible injuries to § 87(2)(b) in his arrest photo.

Victims/witnesses not interviewed

The undersigned investigator mailed § 87(2)(b) and § 87(2)(b) please call letters on November 3, 2006. The investigator scheduled an appointment with § 87(2)(b) for November 24, 2006, which she canceled due to traffic and rescheduled for December 4, 2006. The investigator also scheduled an appointment with § 87(2)(b) for December 4, 2006. Neither § 87(2)(b) nor § 87(2)(b) provided statements about the incident during these phone calls. Both § 87(2)(b) and § 87(2)(b) failed to appear for this appointment without calling to cancel or reschedule. The investigator mailed both § 87(2)(b) and § 87(2)(b) missed appointment letters on the same day. None of the above letters were returned by the United States Postal Service. The investigator left please call voicemails for § 87(2)(b) and § 87(2)(b) on February 9, 2007, April 10, 2007 and April 11, 2007, but they were not returned.

Investigator Henry Cordes mailed § 87(2)(b) please call letters on November 2, 2006 and November 8, 2006. Neither of these letters was returned by the United States Postal Service. Investigator Cordes left messages for § 87(2)(b) on November 2, 2006, November 3, 2006, November 6, 2006, November 8, 2006 and November 13, 2006. The undersigned investigator left additional please call messages for § 87(2)(b) on February 9, 2007 and February 21, 2007.

In an effort to identify the Hispanic male victim allegedly hit with a baton in the police van the undersigned investigator mailed please call letters to § 87(2)(b) and § 87(2)(b) on February 7, 2007, after they were identified as having received summonses by the command log, and on February 21, 2007. None of these letters were returned by the United States Postal Service. The Booking Arraignment Query System, the Command Log and the Holding Pen roster did not reveal any additional individuals arrested at the scene.

POLICE OFFICER INTERVIEWS

Officer Joseph Rivera (44 Precinct)

Arrest Report § 87(2)(b) / Complaint Report § 87(2)(b) (encl. 2d-g)

These documents, filed by Officer Rivera state that § 87(2)(b) prevented an officer from effecting a lawful arrest of another individual by grabbing a police officer's wrist and twisting. § 87(2)(b) was creating loud noise, using obscene language, blocking pedestrian traffic and failed to move when asked to do so by the police. § 87(2)(b) resisted arrest by swinging, kicking and tightening his arms when being handcuffed by an officer. § 87(2)(b) was charged with § 87(2)(b). It notes that physical force was used to restrain/control/remove § 87(2)(b).

Summons § 87(2)(b) § 87(2)(b) (encl. 2h-i)

In this summons, for § 87(2)(b) Officer Rivera noted that § 87(2)(b) was told by the owner of Two Cousins Bar that he was not allowed to enter the premises and § 87(2)(b) subsequently entered without authority or permission.

CCRB Statement (encl. 2j-l)

Officer Joseph Rivera was interviewed at the CCRB on April 11th, 2007.

Officer Rivera is a § 87(2)(b)-old Hispanic male, who is 5'9", 185 lbs. and has short dark-brown hair and brown eyes. On October 29th, 2006, Joseph Rivera worked from 8:00 p.m. until 4:01 p.m. the following day, assigned to conditions with Sergeant Nunez and Officer Melissa Rodriguez. Officer Rivera was in marked police van 5625 and in uniform. Officer Rivera had a number of memo book entries related to the incident which were consistent with his statement to the CCRB. (encl. 2a-c)

At approximately 4:00 a.m. Officer Rivera was inside of the marked police van which was parked in front of Two Cousins Bar on the same side of the street. There had been several fights at the bar on previous occasions and the officers were there to make sure that this did not occur. A fist fight broke out between two men in front of the bar, which was overcrowded. Sergeant Nunez got out of the van first and instructed the officers to follow and break up the fight.

As Officer Rivera approached the two fighting individuals and attempted to pull them apart, a black male later identified as § 87(2)(b) grabbed his right arm and twisted it, pulling him into the crowd towards the door of the bar. Unknown individuals from the crowd pulled § 87(2)(b) back by the shirt to prevent him from being arrested. Officer Rivera grabbed § 87(2)(b) by the shirt and attempted to pull him back away from the crowd. Officer Rivera was hit several times in the back by unknown individuals from the crowd as he struggled with § 87(2)(b). § 87(2)(b) threw several punches hitting Officer Rivera in the body and also kicked his legs. All the while Officer Rivera told § 87(2)(b) to “get over here” but he did not comply. Officer Rivera pushed § 87(2)(b) against the glass of the restaurant and pulled his arms behind his back. Sergeant Nunez placed his hands on § 87(2)(b) attempting to help handcuff him, but the crowd continued to interfere and Sergeant Nunez turned away to deal with the crowd. Officer Rivera “threw” § 87(2)(b) to the ground and handcuffed him while he was on the ground. Officer Rivera never punched § 87(2)(b) and did not see any other officers do so. Officer Rivera did not remember § 87(2)(b) being hit with a baton or an asp. Officer Rivera never grabbed § 87(2)(b) by the neck and did not see any other officer do so.

A call for assistance was made and numerous units arrived on the scene. Officer Rivera believed most of these officers to be from the 44th Precinct, but did not recall the names of any officers. He could not estimate how many officers arrived but stated that it was almost “the whole precinct.”

Officer Rivera picked § 87(2)(b) up and led him to van 5625. § 87(2)(b) did not resist being taken to the van. There was a black male, in his 30’s being placed in the marked van at the time by an unknown officer. Officer Rivera stayed by the van. The black male opened the door to the van, possibly by kicking it and stepped out of the van. Officer Rivera told him to get back into the van, which he did. Officer Rivera did not use any force to get the man back into the van.

Officer Rivera did not use his pepper spray or see any other officers do so. He did not notice any signs of pepper spray being used. None of the prisoners in the van had any visible injuries, or complained of being pepper sprayed.

Officer Rivera did not draw or use his asp at any point and did not see any other officer do so. Officer Rivera did not see where Officer Rodriguez went at the scene. She later complained that she was hit in the back of the head, but did not see who did it. Officer Rivera did not curse at or threaten any civilians with force and did not hear any other officers do so. § 87(2)(b) was taken to the 44th Precinct. He did not complain of any injuries when asked by the desk sergeant. Officer Rivera did not remember who the desk sergeant was at the time.

§ 87(2)(b)’s wife arrived at the 44th Precinct and spoke to Officer Rivera who explained why § 87(2)(b) was arrested. Officer Rivera took § 87(2)(b) to Bronx Central Booking, but it was overcrowded so he was instructed to take him to the 49th Precinct. At the 49th Precinct station house desk, § 87(2)(b) complained of chest pain and asked to be taken to the hospital. Officer Rivera accompanied him to § 87(2)(b). At the hospital, § 87(2)(b) asked for Officer Rivera’s name and shield number, which he supplied to him, by pointing to his clearly displayed badge. § 87(2)(b) told Officer Rivera that he hit like a girl. Officer Rivera did not know what this referred to.

Sergeant Osvaldo Nunez (44 Precinct) (encl. 2p-r)

Sergeant Osvaldo Nunez was interviewed at the CCRB on July 12th, 2007. Sergeant Nunez is a § 87(2)(b)-old Hispanic male, who is 6’1”, 241 lbs., with black hair and brown eyes. On October 29th, 2007, Sergeant Nunez was working as the Impact sergeant, from 5:15 p.m. until 7:12 a.m. with Officer Joseph Rivera and Officer Melissa Rodriguez, a 5’5” Hispanic female, with a stocky build and black hair. Sergeant Nunez

had several detailed entries in his memo book regarding the incident, which were consistent with his statement to the CCRB. (encl. 2m-o)

0410 Observed M/B fighting and pushing bouncer/employee at "two cousins" bar, 15 East 167th Street, in order to gain entry. M/B later I'd as § 87(2)(b) Upon attempting to remove § 87(2)(b) 2nd m/b later identified as § 87(2)(b) did pull Officer H. Rivera's arm in an attempt to obstruct the arrest of § 87(2)(b) did resist violently by jerking his body and swinging elbows at police. Several body thrusts with PR-24 used to overcome resistance. Crowd maced in order to disperse as crowd was surrounding officers. Required 10-13.

0430 10-92CX (6)

0435 10-62A (LOD Notifications)

§ 87(2)(g)

On October 29th, 2007, Sergeant Nunez was performing social club enforcement. This entails patrolling social clubs, both legal and illegal between 2 a.m. and 4 a.m. The officers sit outside of the establishments as they close and wait for the crowd to disperse, ensuring that no fights break out. Sergeant Nunez noted that Two Cousins has a history of over serving alcohol to its patrons and there have been fights at the bar in the past.

At 4:10 a.m. the officers were in the van in front of Two Cousins Bar. Sergeant Nunez noticed a black male, later identified as § 87(2)(b) attempting to reenter the bar, through a large group of people. § 87(2)(b) swung at an individual and forced his way back into the bar. The officers exited the vehicle believing that a fight was going to start.

Officer Rivera reached into the bar and grabbed a hold of § 87(2)(b) § 87(2)(b) grabbed Officer Rivera by his arm, to prevent him from detaining § 87(2)(b) Sergeant Nunez and Officer Rivera then attempted to pull § 87(2)(b) away from the crowd, but unknown individuals in the crowd grabbed him attempting to pull him away from the officers. Sergeant Nunez and Officer Rivera pulled § 87(2)(b) away from the crowd. § 87(2)(b) refused to put his arms behind his back, threw his elbows towards the officers, but did not connect and jerked his body. The officers pushed § 87(2)(b) against one of the doors in order to attempt to handcuff him. § 87(2)(b) was attempting to turn around to face the officers, and his side hit against the door. In order to control § 87(2)(b) Sergeant Nunez struck him three times in his chest area with the short end of his baton, knocking the wind out of him and causing him to fall to the ground. Sergeant Nunez did not see if his head or face hit the ground, but stated that it was possible. Sergeant Nunez and Officer Rivera then handcuffed § 87(2)(b) and took him to the police van. No officer punched § 87(2)(b) and he did not sustain any visible injuries.

Sergeant Nunez stated that Officer Rodriguez was standing behind him while he was struggling with § 87(2)(b) and he did not know what she was doing while the struggle was going on. Sergeant Nunez did not hear anyone ask for his name or shield number at the scene and denied that anyone asked him directly. Sergeant Nunez did not curse at anyone at the scene. Sergeant Nunez never told anyone to get out of his face, threaten to take a person to jail or split their skull.

More people came outside from the bar, causing a crowd numbering at least 200 people to form and surrounded the officers. Sergeant Nunez requested assistance. People in the crowd were yelling expletives and continued to refuse orders to disperse. The crowd was within five feet of Sergeant Nunez. Sergeant Nunez discharged his pepper spray toward the crowd in a single burst of 2-3 seconds in order to get the crowd to disperse. Sergeant Nunez did not recall whether he was standing on the street or on the sidewalk at the time he used his pepper spray. The crowd backed off and part of the crowd began to leave.

Meanwhile, a male prisoner attempted to exit the prisoner van by kicking the door open. He attempted to turn around and back out of the van. Sergeant Nunez then pushed him back into the van and shut the door. Sergeant Nunez never hit or struck the man with his hands or baton. Sergeant Nunez did not see any other officers use pepper spray at the scene. Sergeant Nunez did not see anyone with injuries at the scene.

Sergeant Nunez then instructed the arrested individuals to be taken back to the stationhouse. Sergeant Nunez was at the scene for approximately 20 minutes. Six people were arrested at the scene. Sergeant Nunez did not know how many people were processed and how many were released with summonses. § 87(2)(b) was released with a summons for § 87(2)(b). He was not processed because the owner of the bar refused to press charges.

Three officers were injured and filled out Line of Duty Reports. Sergeant Nunez reported a contusion to one of his fingers, which was sustained at an unknown point during his struggle with § 87(2)(b). An unknown individual struck Officer Rodriguez in the head. Officer Milchak received scrapes from when he was handcuffing someone against a brick wall.

At the stationhouse § 87(2)(b)'s wife spoke with Sergeant Nunez. She stated that she was § 87(2)(b), and he allowed her to see § 87(2)(b). § 87(2)(b) complained that his chest and arm hurt, but still did not have any visible injuries. § 87(2)(b) began to take notes on § 87(2)(b)'s complaints. Sergeant Nunez asked her to leave.

Sergeant Nunez stated that on an unknown date after the incident, Two Cousins Bar was closed after receiving a number of disorderly premises summonses. Sergeant Nunez did not remember the owner's name, but stated that he had dealt with him on numerous occasions.

Officer Melissa Rodriguez (44 Precinct) (encl. 2s-w)

Officer Melissa Rodriguez was interviewed at the CCRB on August 15, 2007.

On October 29, 2006, Officer Rodriguez worked from 8:00 p.m. until 7:05 a.m., assigned to impact conditions in marked van 5625. Officer Rodriguez was working with Officer Joseph Rivera and Officer Offenbacher. Officer Rodriguez had several entries in her memo book which were consistent with her statement. § 87(2)(g)

At approximately 4:03 a.m., Officer Rivera was inside marked van 5625 which was positioned across the street from Two Cousins Bar, along with Officer Joseph Rivera and Sergeant Osvaldo Nunez. The officers exited the van and attempted to disperse a large crowd of 50-70 people which had formed in front of the bar and were blocking pedestrian traffic on the way to the subway station.

Officer Rodriguez saw Sergeant Nunez and Officer Rivera attempt to pull § 87(2)(b) from the bar and turned her attention to preventing the crowd from jumping on Officer Rivera and Sergeant Nunez. When she turned back to Sergeant Nunez and Officer Rivera she saw § 87(2)(b) on the ground. Officer Rivera and Sergeant Nunez were attempting to handcuff him by pulling his arms behind his back but were not using any additional force. They were telling him stop resisting as well. An unknown individual punched Officer Rodriguez in the back of the head from behind. Officer Rodriguez called for assistance. At least 7 marked patrol cars, responded within seconds to the scene.

Officer Rodriguez looked across the street and saw an individual, identified by the investigation as § 87(2)(b) push Officer Milchak on the chest. Officer Milchak stumbled backwards. Officer Rodriguez ran across the street. Officer Milchak grabbed one of arms, and Officer Rodriguez grabbed § 87(2)(b)'s other arm and they were able to handcuff him.

When Officer Rodriguez returned to the van, four prisoners had already been placed in the van. Officer Rodriguez did not see any prisoners attempt to exit the van. Officer Rodriguez returned to the stationhouse with Sergeant Nunez and Officer Rivera in the same van in which they arrived. Officer Rodriguez issued two summonses to individuals at the station house but did not recall whether these summonses were based on her observations or that of another officer. She did not recall what the summonses were issued for. Officer Rodriguez did see any pepper spray used at the scene and was not aware of any officers using pepper spray. Officer Rodriguez did not hear any officers asked for their name or shield number. Officer Rodriguez was not injured when struck to the head and did not file any paperwork in regards.

Officer Bobby Milchak (44 Precinct)

Complaint Report § 87(2)(b) (encl. 3b-c)

In this document, filed by Officer Milchak, he notes that § 87(2)(b) prevented Officer Milchak from effecting an arrest by pushing him on the chest with two hands. § 87(2)(b) was creating loud noise, using offensive language, blocking pedestrian traffic and failed to move, when asked to do so by the police. § 87(2)(b) resisted arrested by swinging and tightening his arms when being handcuffed. § 87(2)(b) was charged with § 87(2)(b).

CCRB Statement (encl.3d-e)

Officer Bobby Milchak was interviewed at the CCRB on April 5th, 2007. On October 29th, 2006, Officer Milchak worked from 8:00 p.m. until 4:35 p.m. the following day. Officer Milchak was assigned to Conditions in marked patrol car 1265 along with Officer Tiffany Dozier.

Officer Milchak had several entries regarding the incident in his memo book which were consistent with his statement to the CCRB. (encl. 2x-3a) § 87(2)(g)

At approximately 4:20 a.m., Officer Milchak was at the stationhouse with Officer Dozier, who is a white female with light brown/ blonde hair, 5'5"-5'6", 24-25 years old, when an officer requested assistance at 167th Street and River Avenue. Officer Milchak and Officer Dozier responded to the scene and upon arrival saw a large crowd of 15-20 individuals in front of Two Cousins Bar. Uniformed officers were on the scene and civilians were screaming, using profanity and swinging their arms at the officers. Officer Milchak did not see any civilians actually hit any officers. Officer Milchak and Officer Dozier exited the vehicle. Officer Milchak did not know where Officer Dozier went at the scene and did not recall if he returned to the stationhouse with her. He saw her at some point later at the precinct, but did not discuss the incident with her.

Officer Milchak was about to approach the crowd when he heard unidentified officers tell another large crowd of 20-30 people across the street from the bar to get back in a loud voice. The crowd was standing in front of a restaurant, preventing an individual from exiting the restaurant. Officer Milchak approached one unidentified male to tell him specifically to clear the area when an individual, identified as § 87(2)(b) after arrest, approached Officer Milchak. § 87(2)(b) pushed Officer Milchak in the chest. Officer Milchak grabbed § 87(2)(b) and along with other unknown officers handcuffed him. § 87(2)(b) resisted arrest by kicking and swinging his arms.

Unknown officers placed § 87(2)(b) in a prisoner van. From about 25 feet away Officer Milchak saw an unidentified male attempt at least once, but possibly several times to get out of the van. The male got up from the rear of the van, pushed the door open with his right shoulder and stepped out of the vehicle. A white or Hispanic male officer placed their hands on him. Officer Milchak did not recall exactly how this male was placed back in the van. Officer Milchak did not see the officer hit the male. Officer Milchak did not see any officers draw their batons or use pepper spray at the scene at the scene. Officer Milchak did not curse at or threaten any civilians with force.

After Officer Milchak took his prisoner back to the station house, he transported another unknown prisoner, identified via investigation as § 87(2)(b) from the scene to Bronx Central Booking and then to the 49th Precinct. That individual became sick, complaining of chest pains at the precinct and Officer Milchak transported him to § 87(2)(b).

Officer Tiffany Dozier (44 Precinct)

Summons § 87(2)(b) § 87(2)(b) (encl. 3h-i)

Officer Dozier issued this summons to § 87(2)(b) for § 87(2)(b) (He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse.) The criminal court information stated that § 87(2)(b) with intent to cause public annoyance/inconvenience did

congregate with numerous others in a public place and refused to comply with a lawful police order to disperse.

CCRB Statement (encl. 3i-k)

Police Officer Tiffany Dozier was interviewed at the CCRB on May 9th, 2007.

On October 29th, 2007, Officer Dozier worked from 8:00 p.m. until 7:35 a.m. Officer Dozier was working with Officer Bobby Milchak assigned to 311 auto (which entails responding to complaints from 311). Officer Dozier had several entries in her memo book related to the incident which were consistent with her statement to the CCRB. (encl. 3f-g)

At approximately 4:15 a.m. Officer Dozier and Officer Milchak stopped their vehicle at the northwest corner of 167th Street and River Avenue. They saw several large groups of people who were leaving from Two Cousins Bar. There were more than 50 people in the street. There were police vehicles from other commands, but she did not know which these were. Officers were issuing the crowd orders to disperse.

Officer Dozier asked people in the crowd to leave saying “do me a favor it’s late, go home” She did not speak to anyone in particular. Officer Dozier was at the scene for approximately 10 minutes. She did not have physical contact with anyone at the scene. Officer Dozier left the scene as the crowd had dispersed.

She did not see any officers with their asps or batons drawn. She did not see any officer use pepper spray or any indication that it was used. When shown a command log entry indicating that she issued a summons, Officer Dozier stated that it was an error, noting that she did not issue any summonses. Officer Dozier did not witness any struggles between officers and civilians. Officer Dozier did not see Officer Milchak after he exited the vehicle until later at the stationhouse. Officer Dozier did not recall anyone from the scene coming to the stationhouse to complain.

Officers not interviewed

Based on § 87(2)(b)'s 911 call and the SPRINT report discussed below, at least 6 additional vehicles responded to the scene after the call for assistance was made. § 87(2)(g)

Medical Records—§ 87(2)(b) § 87(2)(b) § 87(2)(b) (encl. 4a-m)

§ 87(2)(b)'s medical records indicate that he complained of chest pain to his left side and pain to his left arm secondary to falling while in police custody.

SPRINT § 87(2)(b) /S (encl.5c-m)

At 4:10 a.m. IMPACT van 6625 made a call for assistance. Sectors H,K, Car ST1, ST2 are listed as responding to the scene. At 4:30 a.m. 6 people were under arrest by IMPACT van 6625. At 6:38 a.m. Sergeant Nunez requested EMS to the stationhouse for a laceration to his finger.

At 4:23 a.m. an additional SPRINT Job was generated by a call to 911 by § 87(2)(b) who stated that a female was pepper sprayed and hit with an officer's baton. EMS responded to the scene at 4:27 a.m., but could not locate the individual for whom the AIDED was requested.

Roll Call (encl. 5s-x)

This roll call lists Officer Rivera, Officer Rodriguez and Officer Offenbacher as assigned to van 5625. However, Officer Rivera and Sergeant Nunez noted that Officer Offenbacher was in the van with them upon arrival at the scene. It lists Officer Milchak and Officer Dozier as assigned to vehicle 1265. It lists Officer Ramuno as assigned to vehicle 1673. The remaining vehicles cited as being present at the scene belonging to the 44th Precinct are not listed on the roll call.

Command Log – October 29, 2007 (44 Precinct) (encl. 5p)

The command log contains entries for § 87(2)(b) and § 87(2)(b) All three were listed as being in apparently normal physical condition.

Holding Pen Roster (encl. 5q)

The holding pen roster lists § 87(2)(b) and § 87(2)(b) as being held at the 44th Precinct.

Fleet Services (encl. 5y)

Vehicles 1673, 1221, 5108, 2109 and 5625 are assigned to the 44th Precinct. Vehicle 1759 is assigned to the 41st Precinct. Vehicle 1762 is assigned to the 42nd Precinct.

Summons Dispositions

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civil Suit (encl. 8a)

As of December 3, 2007, no notice of claim has been filed in connection with this case.

Officer Complaint History (encl. a-d)

Sergeant Nunez and Officer Rivera, who have been members of service for 11 and 2 years respectively, have no previously substantiated CCRB complaints in which the NYPD has imposed discipline.

Civilian Complaint History (encl. e-h)

This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b)

Civilian Criminal History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations**Officer Identification and pleading**

Both Officer Rivera and Sergeant Nunez match physical descriptions provided by § 87(2)(b) Officer Rivera and Sergeant Nunez acknowledged using force to arrest § 87(2)(b) with Sergeant Nunez specifically documenting the amount and type of force used against § 87(2)(b)

Sergeant Nunez closely matches the physical description provided by § 87(2)(b) of the officer who pepper sprayed § 87(2)(b) and refused to provide his shield number. § 87(2)(g)

§ 87(2)(b) could not describe in any detail the male officer whom he alleged told him to get the fuck out of his face before he goes to jail and splits his skull and then refused to provide his shield number. § 87(2)(g)

The investigation was not able to establish the identity of the male individual who was allegedly struck with a baton after attempting to get out of the police van. § 87(2)(b) and § 87(2)(b) Sergeant Nunez, Officer Milchak and Officer Rivera all provided varying accounts this interaction. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) did not cooperate with the investigation, and there were no witnesses to corroborate his allegations. § 87(2)(g)

Assessment of Evidence

It is undisputed that § 87(2)(b) resisted Officer Rivera and Sergeant Nunez's attempts to handcuff him.

§ 87(2)(g)

§ 87(2)(b) himself admitted to refusing to place his arms behind his back, while § 87(2)(b) characterized § 87(2)(b)'s resistance as fighting with the officers, but when asked to explain this stated that § 87(2)(b) did not strike the officers. Officer Rivera and Sergeant Nunez both stated that § 87(2)(b) was actively resisting arrest, by swinging his arms at the officers. Officer Rivera stated that § 87(2)(b) grabbed his hand and then punched him several times and kicked him. § 87(2)(b) alleged that Officer Rivera punched him in the jaw and again in the stomach. Officer Rivera denied punching § 87(2)(b) but acknowledged that he "threw" § 87(2)(b) to the ground. Officer Rivera was not apparently forthcoming in his description of this force. He corroborated that § 87(2)(b) later commented in the hospital "you hit like a girl" but denied knowing what § 87(2)(b) was referring to. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) The Police Student's guide authorizes officers to use impact techniques to overcome physical assault. Patrol guide procedure 203-11 justifies such a minimal use of force when an officer is defending himself or another, or effecting an arrest. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A -- Officer Joseph Rivera spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(g)

Allegation B -- Officer Joseph Rivera used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation C-- Sergeant Osvaldo Nunez struck § 87(2)(b) with a baton.

§ 87(2)(g)

Allegation D-- An officer struck § 87(2)(b) with a baton.

§ 87(2)(g)

Allegation E-- An officer threatened § 87(2)(b) with the use of force.

Allegation F-- An officer refused to provide his name and/or shield number to § 87(2)(b)

§ 87(2)(g)

Allegation G-- Sergeant Osvaldo Nunez refused to provide his name and/or shield number to § 87(2)(b)

§ 87(2)(g)

Allegation H-- Sergeant Osvaldo Nunez used pepper spray against § 87(2)(b)

§ 87(2)(g)

Allegation I-- An officer used physical force against § 87(2)(b)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: